THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3957 OF 2001

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DATED 16.11.2005

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BETWEEN

M/s.The Tenali Menure Merchants Association, rep.by its Secretary Nerella Subba Rao, Morrispet, Tenali.

… Petitioner

and

The Commissioner, Tenali Municipality, Guntur District.

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3957 OF 2001

ORDER:

The Tenali Menure Merchants Association seeks a writ of Mandamus declaring resolution No.250 dated 30.10.2000 passed by the respondent Municipality as notified in Guntur District Gazette in November, 2000, prescribing/enhancing rates for trade licence in respect of fertilizer shops. The petitioner Association, *inter alia,* contends that there is no power vested in the Municipality to prescribe and levy trade licence fee for a business, which is not mentioned in Schedule IV of A.P.

Municipalities Act, 1965 (the Act, for brevity).

A counter affidavit is filed by the Commissioner of Tenali Municipality stating that the Municipality is competent to levy trade licence fee under Sections 260,263, 264, 271, 301, 307, 308, 330 and 332 of the Act and that the enhanced rates are not exorbitant.

The point raised in this writ petition is squarely covered by the Judgment of this Court in W.P.No.26242 of 2000 and batch, dated 24.10.2005. This Court followed earlier decision of this Court in **Satyanarayana Trading Co., v Secretary & Special Officer** and held that the scope of the entries in Schedule IV cannot be enlarged to bring into fold every business, which is not specifically named in Schedule IV. It was further held as under.

> Section 328 of the Act empowers the Government to alter, add or cancel schedules-I to IV of the Act. Sub section (2) thereof further requires the Government to introduce the notification altering the schedules before the legislative assembly during the next session of the assembly following the date of issue of notification. Therefore amending schedule IV is a legislative function, which cannot be usurped by the Municipal Council or the Municipal Commissioner. In respect of any item of business or category of business, which is not specifically found in entries (a) to (v) of schedule IV, Municipal council cannot impose trade licence fee unless and until proper procedure is followed under Section 328 of the Act. The possibility of the Government amending or altering schedule IV in accordance with the procedure contemplated under Section 328 – which is always available to them – does not in any manner validate the resolution of the municipal council, which is beyond its powers.

Following the Judgment as above, this writ petition is allowed without making any order as to costs.

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(V.V.S.RAO,J)

16.11.2005.

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